IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.03.2005

Coram:

The Honourable Mr.MARKANDEY KATJU, Chief Justice
and
The Honourable Mr.Justice F.M.Ibrahim Kalifulla

Writ Appeal No. 2780 of 2004

1. The Commissioner,
   Theni Allinagaram Municipality,
   Theni.

2. Revenue Inspector,
   Theni Allinagaram Municipality … Appellants
   (Respondents)

vs.

Mrs.Rajeswari …. Respondent
(Petitioner)

Writ Appeal filed under Clause 15 of the Letters Patent against the order made in W.P.M.P.No.24052 of 2004 in W.P.No.19979 of 2004 dated 13.07.2004.

For Appellants …. Mr.AL.Somayaji
Addl.Advocate General,assisted by
Mr.R.Kanniappan

For Respondent …. Mrs. Pushpa Sathyaranaryana
for M/s.T.R.Rajaraman

J U D G M E N T

(The Judgment of the Court was delivered by
The Honourable The Chief Justice)

Heard the learned counsel for the parties.

2. We have perused the impugned order of the learned single Judge dated 13.07.2004.

3. The respondent herein filed the writ petition alleging that the building bearing Survey No. 501/1D situate in the Theni Bus Stand belongs to the Theni Allinagar Municipality. The writ petitioner's husband Mr.A.Chakravarthy had taken the said building on lease from the municipality for the purpose of running a vegetarian restaurant. He entered into a lease

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agreement on 01.10.1986 with the Municipality and had also taken possession of the property, and was running a vegetarian restaurant called "Kavitha Restaurant". The total extent of the area taken on lease is 1135 sq.ft.

4. It is alleged in paragraph-2 of the affidavit filed in support of the writ petition that at the time of entering into the agreement, the Commissioner, Theni Allinagar Municipality (respondent no.1 in the writ petition) had requested the petitioner's husband to give a letter agreeing to pay the rent for the premises at the rate of Rs.8300/- per month. It is alleged that the petitioner's husband represented to the Commissioner that the rent was very high compared to the plinth area and requested to reduce the rent. It is alleged that the Commissioner gave assurance that he will consider the request to reduce the rent, but he did not take steps to do so. In the meantime, the petitioner's husband died, and the petitioner is running the said vegetarian restaurant

5. Since the writ petitioner alleged that the rent claimed was exorbitant, she filed R.C.O.P.No.34 of 1990 before the Rent Controller, Periyakulam District Munsif Court for fixing fair rent. However, the said R.C.O.P was dismissed as not maintainable under Section 30(iii) of the Tamil Nadu Lease and Rent Control Act. Aggrieved she filed appeal before the Subordinate Court, Periyakulam which was allowed, and the matter was remanded to the Rent Controller for fresh disposal after appointment of an Engineer to inspect the property. After remand, the R.C.O.P was heard on merits, and a fair rent was fixed at the rate of Rs.2864/- per month. Aggrieved both the petitioner and the respondents filed two R.C.As independently being R.C.A. Nos. 7 & 9 of 1995 before the Subordinate Court, Periyakulam. The appeal filed by the respondents was allowed, and the appeal of the writ petitioner was dismissed. Aggrieved the writ petitioner filed two revisions before this Court being C.R.P.Nos. 1401 & 1402 of 2004. During the pendency of the above R.C.O.P, the Government passed a G.O fixing rent for the premises at Rs.3500/-. Hence, it is alleged that the first respondent can claim only Rs.3500/- per month as rent, since that has been fixed by the Government by a G.O. However, taking advantage of the dismissal of the R.C.O.P subsequent to the filing of the above revision, the first respondent has issued a notice dated 18.06.2004 directing the petitioner to pay a sum of Rs.13,59,358/- within seven days from the date of receipt of the notice, failing which she will have to handover possession of the vegetarian restaurant.

6. The petitioner sent a reply through her counsel on 21.06.2004 stating that she has been paying rent at the rate of Rs.5684/- per month without prejudice to her contentions in the fair rent proceedings. She has paid

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Rs.10,05,852/-, but the respondents have alleged that a sum of Rs.13,59,358/- is due as arrears of rent. This sum has been arrived by calculating rent at Rs.8300/- per month, which is not correct, because even as per the letter dated 06.01.1995, the rent fixed by the Government is only Rs.3500/-per month, and hence the respondents cannot claim any thing more than that.

7. The writ petitioner has in fact alleged that she has been paying a sum of Rs.5684/- per month, which is Rs.3000/- in excess of the fair rent fixed by the Rent Controller. She has alleged that she is not in arrears of rent, and the amount claimed by the first respondent by notice dated 18.06.2004 is exorbitant, illegal and against its own order dated 06.01.1995 fixing the rent at Rs.3500/-.

8. In the meanwhile, in C.R.P.Nos.1401 and 1402 of 2004 filed against R.C.A.Nos. 7 & 9 of 1995, an interim direction was granted to deposit the rent, and status quo was ordered with regard to possession of the property. However, in the mean time, the respondents acted in a very high handed manner and locked the premises leased out and have taken away the keys. It is alleged that the respondents have no right to take forcible possession from the petitioner, and they have no right to lock the premises.

9. In our opinion, even assuming that the writ petitioner was in arrears of rent, the landlord (the municipality) had no right to take forcible possession of the property in question or put a lock on the same, except by due process of law vide Yeshwant Singh v. Jagdish Singh (AIR 1968 SC 620. In the aforesaid decision, the Supreme Court followed the decision of the Privy Council in Midnapur Zamindary Co. Ltd. v. Naresh Narayan Roy, AIR 1929 PC 144 , wherein the Privy Council observed:-

> " In India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court"

The Supreme Court also followed the decision of the Bombay High Court in K.K.Verma v. Naraindas C. Malkani, AIR 1954 Bom. 358 wherein Chagla, C.J. observed:-

> " Under the Indian law the possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy his possession is juridicial and that possession is protected by statute. Under

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> Section 9 of the Specific Relief Act a tenant who has ceased to be a tenant may sue for possession against his landlord if the landlord deprives him of possession otherwise than in due course of law, but a trespasser who has been thrown out of possession cannot go to Court under Section 9 and claim possession against the true owner."

10. The Supreme Court in the above decision i.e., Yeshwant Singh v. Jagdish Singh (supra) also quoted with approval the following observation of the Allahabad High Court in Yar Mohammed v. Lakshmi Das, AIR 1959 All 1 (FB):-

> " Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a Court. No person can be allowed to become a Judge in his own cause. As observed by Edge, C.J., in Wali Ahmad Khan v. Ayodhya Kundu, 1891 ILR 13 All 537 at p.556:
>
> " The object of the section was to drive the person who wanted to eject a person into the proper Court and to prevent them from going with a high hand and ejecting such persons"

11. Thus, even in a case where the lease of a tenant has expired, the landlord cannot enter into his own building, except through due process of law i.e., by filing a suit or other proceedings to evict the tenant through a Court or Competent Authority vide Rame Gowda (dead) by LRs v. M. Varadappa Naidu (dead) by LRs, 2004 1 SCC 769.

12. In the present case, it prima facie seems that the Municipal authorities have illegally taken possession of the premises in question by placing their lock on the same. Hence, we direct that the municipality shall forthwith remove the locks placed by them on the said property, and handover the possession of the same to the writ petitioner/respondent.

13. We, therefore, sustain the impugned order, but with the aforesaid direction, and with the modification that in addition to the amount already paid by the writ petitioner, she shall pay an additional sum of Rs.1,00,000/- to the appellants within three months from to-day.

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14. With the above observations, the writ appeal is disposed of. No costs. Consequently, W.A.M.P.No.5140 and W.V.M.P.No.5620 of 2004 are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Vu/pv

To
1. The Commissioner,
Theni Allinagaram Municipality,
Theni.

2. The Revenue Inspector,
Theni Allinagaram Municipality

+1cc to Mr.R.Kanniappan, Advocate Sr 12383

+1cc to Mr.T.R.Rajaraman, Advocate Sr 12535

TEK (CO)
km/21.3.

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